IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARWAN SNODGRASS	:	
Petitioner,	:	Case No. 3:09-cv-081
vs.	:	JUDGE WALTER HERBERT RICE
TIM BRUNSMAN, Warden, Lebanon Correctional Institution,	:	
	:	
Respondent	:	

DECISION AND ENTRY SUSTAINING PETITIONER'S MOTION FOR "LEAVE TO ACCEPT PETITIONER'S OBJECTIONS TO THE MAGISTRATE'S REPORT AND RECOMMENDATION" (DOC. #14); ORDERING CASE REOPENED; OVERRULING PETITIONER'S OBJECTIONS TO MAGISTRATE'S RECOMMENDATIONS AND REQUEST FOR CERTIFICATE OF APPEALABILITY (DOC. #12); LEAVE TO APPEAL *IN FORMA PAUPERIS* DENIED; AMENDED JUDGMENT TO ISSUE; TERMINATION ENTRY

On October 24, 2011, Magistrate Judge Ovington issued a Report and Recommendations, recommending that Marwan Snodgrass's Petition for Writ of Habeas Corpus be denied and dismissed, that he be denied leave to appeal *in forma pauperis*, and that he be denied a certificate of appealability. Doc. #9. On November 15, 2011, the Court adopted that Report and Recommendations, noting that no objections had been filed within the time allotted, Doc. #10, and entered Judgment in favor of Respondent, Doc. #11.

On November 21, 2011, Petitioner filed an Objection to the Report and Recommendations. Doc. #12. On November 22, 2011, Petitioner filed a separate Notice, Doc. #13, indicating that he had delivered his Objection (sic) to prison authorities for mailing on November 15, 2011, which is deemed to be the date of filing. *See State v. Owens*, 121 Ohio App.3d 34, 36, 698 N.E.2d 1030, 1031 (Ohio Ct. App. 1997). Then, on December 8, 2011, Petitioner filed a motion for "Leave to Accept Petitioner's Objections to the Magistrate's Report and Recommendations." Doc. #14. Attached to that motion is documentation showing that although the Magistrate Judge's Report and Recommendations were mailed to him on October 24, 2001, he did not receive it until November 2, 2011.[1]

Accepting Petitioner's statement as true, the Court must deem his Objections to be timely filed. The Court therefore SUSTAINS his Motion for Leave to File the Objections, Doc. #14, and directs the Clerk of Court to reopen the case for this limited purpose.

The Court has now fully considered the Objections raised by Petitioner and finds them to be without merit. Based on the reasoning and citations of authority set forth in the Report and Recommendations, as well as upon a thorough *de novo* review of this Court's file and the applicable law, Petitioner's Objections, Doc. #12, are OVERRULED in their entirety.

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[1] Petitioner maintains that he previously notified the Court that he was transferred from Lebanon Correctional Institution to London Correction Institution; however, the Court's docket did not indicate that he provided the Court with his new address.

The Court renews its previous holdings that Petitioner has not made a substantial showing of the denial of a constitutional right, that the Court's decision would not be debatable among reasonable jurists, and that any appeal from this Court's decision would be objectively frivolous. The Court therefore again denies Petitioner's request for a certificate of appealability and leave to appeal *in forma pauperis*.

The Clerk of Court shall issue an Amended Judgment in favor of Respondent and against Petitioner, and then re-terminate this case upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: January 11, 2012

WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE